

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Joseph Upsher,

Plaintiff,

Civil No. 19-cv-1805 (MJD/HB)

v.

Tom Roy,¹ Commissioner of Corrections;
Gregory T. Simon, ISR Parole Agent DOC;
Jason Hanson, ISR Parole Agent DOC;
Eddie Miles, Warden, MCF-Lino Lakes;
Kathy Halvorson, Warden, MCF-St. Cloud;
Shannen Remann,² Warden, MCF-Faribault,

Defendants.

**ORDER ON REPORT
AND RECOMMENDATION**

The above-entitled matter came before the Court upon the Report and Recommendation of the United States Magistrate Judge. No objections have been filed to the Report and Recommendation in the time period permitted.

Based upon the Report and Recommendation of the Magistrate Judge, and all the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

1. The Report and Recommendation [Docket No. 45] is **ADOPTED**;
2. Defendants' Motion to Dismiss [Docket No. 37] is **GRANTED**;
3. Plaintiff's federal claims are **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 12(b)(6); and

¹ Plaintiff named former Commissioner Tom Roy in both his official and individual capacities. Paul Schnell is currently the Commissioner of the Minnesota Department of Corrections. As the current Commissioner, Schnell is automatically substituted in Roy's place for purposes of the official capacity claims, but the claims against Roy in his individual capacity remain as pled. Fed. R. Civ. P. 25(d).

² Defendants indicate the correct spelling of her name is Shannen Reimann. (Def. Mem. Supp. Mot. at 1 n.1 [Doc. No. 38].) For the purposes of this Order, the Court will use Plaintiff's spelling.

4. Plaintiff's state tort law claims are **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 12(b)(1).

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: May 18, 2020

s/ Michael J. Davis

MICHAEL J. DAVIS

United States District Judge